D.B. CIVIL SPECIAL APPEAL(W)NO.486/2007

Hans Raj
Vs.
State of Rajasthan & Ors.

Date of Judgment :: 13-08-2007

HON'BLE THE ACTING CHIEF JUSTICE SHRI J.M. PANCHAL
HON'BLE SHRI JUSTICE BHANWAROO KHAN

Mr. R.K. Singhal with
Mr. S.K. Gupta, for the appellant.
Mr. S.L. Jain with
Mr. H.R. Chawla, for the respondents.

PER HON'BLE THE ACTING CHIEF JUSTICE MR. J.M. PANCHAL

By filing the instant appeal under Rule 134 of the Rajasthan High Court Rules, the appellant has challenged legality of judgment dated March 21, 2007 rendered by the learned Single Judge in S.B. Civil Writ Petition no.1287/2002 by which the prayers made by the appellant, (1) to set aside the order dated March 21, 2002 passed by the Tehsildar under Section 22 of the Rajasthan Colonisation Act, 1954 for summary eviction of the appellant and (2) to direct the respondents to decide the application submitted under Rule 7-A of the Rajasthan Colonization (Allotment [Sale] of Government Land to Pong Dam Oustees (and their Transferees) in the Indira Gandhi Canal Colony)Rules, 1972 are refused and the Sub Divisional Officer, Anoopgarh is directed to decide the matter with regard to allotment of land in question after hearing Sohan

Singh as well as the appellant by passing a reasoned order in accordance with law.

The father of the appellant was a Pong Dam Oustee. He was issued certificate under the Rajasthan Colonization (Allotment [Sale] of Government Land to Pong Dam Oustees (and their Transferees) in the Indira Gandhi Canal Colony) Rules, 1972 ('the Rules', for short) and allotted 25 bighas of land. The possession of the allotted land was handed over to him on July 8, 1973. Under the allotment order, the father of the appellant was required to pay price in instalments. He could not make payment of the instalments and expired on February 28, 1976. Therefore, the allotment of land made in favour of the father of the appellant was cancelled by order dated November 19, 1976. The case of the appellant was that before cancellation of allotment order, no notice was given to his father. The appellant claims that he has filed an application under Rule 7-A of the Rules before the competent authority to revoke the order of cancellation of allotment of land. The grievance made by the appellant was that the Tehsildar without deciding the said application initiated proceedings for taking possession by passing order dated March 21, 2002 under Section 22 of the Act. Under the circumstances, the appellant invoked extra ordinary jurisdiction of this Court under Article 226 of the

Constitution by filing S.B. Civil Writ Petition no.1287/2002 and claimed reliefs to which reference is made earlier.

On notice being issued by the Court, an application was filed by Sohan Singh stating that the land in question was allotted to his father Rai Singh in the year 1970 as a Pong Dam Oustee and as his father could not pay the amount required, the allotment was cancelled, as a result of which, he had moved application under Rule 8-A of the Rules for restoration of the allotment and grant another land. The case of Mr. Sohan Singh was that the said application was allowed by the competent authority by order dated July 26, 1985 but since information about the allotment of another land was not received, no steps were taken to take possession of the allotted land and therefore, the allotment was cancelled on February 22, 1986. Mr. Sohan Singh claimed that he came to know about that order on January 30, 2002 and therefore approached Revenue Appellate Authority, as a result of which the matter is remanded to Sub Divisional Officer for enquiry and action. Under the circumstances, Mr. Sohan Singh filed an application under Order 1 Rule 10 of the Code of Civil Procedure with a prayer to implead him as a respondent in the petition. The said application was allowed.

After hearing the learned counsels for the parties, the learned Single Judge refused to interfere in the matter as the matter is remanded to Sub Divisional Officer for enquiry and has directed the Sub Divisional Officer to decide the matter after hearing Mr. Sohan Singh as well as the appellant and decide the case by reasoned order in accordance with law, which has given rise to the instant appeal.

This Court has heard the learned counsels for the parties at length and also considered the documents forming part of the petition.

The fact that the appellant has filed application under Rule 7-A of the Rules is not in dispute. Similarly, the fact that the Sub Divisional Officer has not decided the said application is also not in dispute. On the facts and in the circumstances of the case, this Court is of the opinion that the learned Single Judge was justified in not granting the reliefs claimed in the petition. However, this Court is of the opinion that interest of justice would be served if the Sub Divisional Officer is directed to consider the application filed by the appellant under Rule 7-A of the Rules on merits. As the appellant has failed to make out a case for interference of this Court, the instant appeal is liable to be dismissed. The Sub Divisional

Officer, Anoopgarh is directed to comply with directions issued by the learned Single Judge in the impugned judgment and also to consider the application submitted by the appellant under Rule 7-A of the Rules and decide the same in accordance with law.

Subject to above-referredto direction, the appeal fails and is dismissed.

[BHANWAROO KHAN],J. [J.M.PANCHAL],ACTG.CJ.

Praveen